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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TONY ANNECHARICO, individually and as a class representative on behalf of others similarly situated, Plaintiff, v. RAYMOUR & FLANIGAN and JOHN DOE INDIVIDUALS AND BUSINESSES 1-20, Defendants.	16 Civ. ______ **NOTICE OF REMOVAL**

TO: THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PLEASE TAKE NOTICE that Defendant Raymours Furniture Company, Inc., d/b/a Raymour & Flanigan ("R&F"), pursuant to 28 U.S.C. §§ 1332, 1367, 1441, 1446, and 1453, and with full reservation of all defenses, by its undersigned attorneys, submits this Notice of Removal to this Court from the Superior Court of New Jersey, Law Division, Civil Part, Ocean County, in which the state action described below is now pending, but which is within the original jurisdiction of this Court and properly removed based upon the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332, 1446, and 1453 ("CAFA").

In support of removal to this Court, R&F alleges as follows.

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On February 10, 2016, Plaintiff filed a putative class action Complaint captioned *Tony Annecharico, individually and as a class representative on behalf of others similarly situated v. Raymour & Flanigan and John Doe individuals and businesses 1-20*, Docket No. OCN-L-441-16 (N.J. Super. Ct., Law Div., Ocean Cnty.) against R&F and 20 unidentified "John Doe" defendants, in the Superior Court of New Jersey, Law Division, Civil Part, Ocean County (the "State Court Action"). Pursuant to 28 U.S.C. § 1446(a) and Local Civil Rule 5.1(e), true and correct copies of the Summons, Complaint, Civil Case Information Statement, and Track Assignment Notice in the State Court Action are attached to this Notice as Exhibit A, and a copy of the Notice of Filing of Notice of Removal served upon counsel for Plaintiff Tony Annecharico and filed with the Clerk of the Superior Court of New Jersey, Law Division, Civil Part, Ocean County is attached to this Notice as Exhibit B (without its accompanying attachments).

2. On February 26, 2016, R&F was served with the Summons and Complaint. Thirty days have not yet elapsed from service of process on R&F. This Notice is therefore timely pursuant to 28 U.S.C. § 1446(b).

3. The Superior Court of New Jersey, Ocean County is located within this judicial district. 28 U.S.C. § 110. This Notice is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

ALLEGATIONS OF THE COMPLAINT

4. This action is a putative class action brought on behalf of all New Jersey citizens who purchased furniture from an R&F retail store located at 526 West Route 70, Brick, New Jersey (the "Brick Store") pursuant to a form sales contract used by R&F. Complaint ¶ 94.

Plaintiff alleges that this form contract did not contain certain language, set forth in a specific format and font, regarding the customer's rights to a full refund in the event of R&F's failure to deliver furniture by the promised delivery date, as required by the New Jersey Household Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 through 13:45A-5.4 (the "HFR"), and contained other language allegedly prohibited by the HFR. Complaint ¶¶ 28-46, 122-23, 137-47. Plaintiff also alleges that R&F failed to provide him with a written copy of an extended service plan that he purchased in connection with this purchase of a mattress at the Brick Store, and refused to honor the terms of the service plan when he later experienced problems with the mattress. *Id.* ¶¶ 16-27, 137-47, 151-58.

5. On behalf of Plaintiff and the putative class, the Complaint purports to state claims for (a) violation of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 through N.J.S.A. 56:12-18 ("TCCWNA"), Complaint ¶¶ 120-24, and (b) declaratory judgment. *Id.* ¶¶ 125-36. With respect to these putative class claims, the Complaint seeks, *inter alia*, a statutory penalty of $100 for each alleged violation of TCCWNA, "cancellation remedies, a declaration that the form sales contract is null, void and unenforceable, attorneys' fees, interest, and costs of suit. *Id.* ¶¶ 124, 136.

6. The Complaint also purports to state claims on behalf of Plaintiff individually for (a) violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq*., Complaint ¶¶ 137-48, and (b) "breach of contract/warranty" and violation of the Magnuson-Moss Warranty-Federal Trade Improvement Act, 15 U.S.C. § 2301 *et seq*. Complaint ¶¶ 149-58. With respect to these individual claims, the Complaint seeks, *inter alia*, compensatory damages in an unspecified amount, unspecified injunctive relief "to end the aforesaid illegal misconduct," attorneys' fees, interest, and costs of suit. *Id.* ¶¶ 148, 158.

7. As to the two claims described in paragraph 5 above, Plaintiff seeks to represent a putative class consisting of all New Jersey citizens who "both purchased 'household furniture' as defined by" the HFR, from the Brick Store, and "who received contracts from that store with the same language that violates the HFR" as alleged in the Complaint "from a period of six years prior to the filing of the complaint." *Id.* ¶ 94.

8. R&F disputes the Complaint's factual and class-related allegations and legal conclusions, and denies that Plaintiff or the putative class have been harmed in any way.

BASES FOR REMOVAL

9. This action is within the original jurisdiction of this Court, and removal is proper under CAFA. CAFA grants district courts original jurisdiction over putative class actions in which the amount in controversy exceeds $5 million and any member of the putative class of Plaintiffs is a citizen of a State different from that of Defendant. As set forth below, this action satisfies each of the requirements of 28 U.S.C. § 1332(d)(2) for original jurisdiction under CAFA.[1]

10. Covered Class Action. Without conceding that there is any merit to the Complaint's allegations or claims, this action meets the CAFA definition of a class action, which is "any civil action filed under [R]ule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a). *See* Complaint ¶¶ 92-118.

[1] R&F is the only non-fictitious defendant named in the Complaint. In any event, no other Defendants are required to join or consent to a removal based on CAFA. *See* 28 U.S.C. § 1453(b).

11. Class Action Consisting of More than 100 Members. The Complaint alleges that "the class is believed to number thousands of persons . . . ." *Id.* ¶ 99. Moreover, according to R&F's records, it made 55,470 sales at the Brick Store from February 10, 2010 through March 22, 2016. Accordingly, the aggregate number of class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

12. Diversity. The required diversity of citizenship under CAFA is satisfied because "any member of a class of Plaintiffs is a citizen of a State different from any Defendant." 28 U.S.C. § 1332(d)(2)(A). Plaintiff alleges that he is a New Jersey citizen. Complaint ¶ 5. R&F is a New York corporation with its principal place of business in New York.

13. Amount in Controversy. Under CAFA, the claims of the individual class members are aggregated to determine if the amount in controversy exceeds the required "sum or value of $5,000,000, exclusive of interest and costs." 28 U.S.C. §§ 1332(d)(2), (d)(6). Without conceding any merit to the Complaint's allegations or claims, the amount in controversy here satisfies this jurisdictional threshold. TCCWNA provides for the payment of a penalty of $100 for each violation of its provisions. N.J.S.A. 56:12-17. As set forth in paragraph 11 above, according to R&F's records, it made 55,470 sales at the Brick Store from February 10, 2010 through March 22, 2016. Accordingly, the statutory penalties sought by Plaintiff alone place $5,547,000 at issue.

14. Plaintiff additionally seeks, on behalf of the putative class, declaratory relief nullifying and rendering "void and unenforceable" the form sales contract used by R&F at the Brick Store. Complaint ¶¶ 135-36. Although R&F denies that this remedy is appropriate, the value of the declaratory relief – payments that are still due and owing to R&F on any furniture sales made pursuant to the form contract at issue – should also be factored into the amount in

controversy. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 347 (1977) ("In an action seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.").

15. Plaintiff and the putative class also seek to recover attorneys' fees pursuant to the TCCWNA claim. Complaint ¶ 124. The likely amount of such fees also should be counted in determining the amount in controversy. *See Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007).

16. For purposes of removal "the question is not what damages the Plaintiff will recover, but what amount is 'in controversy' between the parties.'" *Brill v. Countrywide Home Loans, Inc.,* 427 F.3d 446, 448 (7th Cir. 2005) ("That the Plaintiff may fail in its proof, and the judgment be less than the threshold (indeed, a good chance that the Plaintiff will fail and the judgment will be zero) does not prevent removal."). While R&F disputes that it is liable to Plaintiff or the putative class, or that Plaintiff or the putative class suffered any injury whatsoever, for purposes of satisfying the jurisdictional prerequisites of CAFA, the matter in controversy exceeds $5 million.

RESERVATION OF DEFENSES AND RIGHTS

17. As of the date of the filing of this Notice, no proceedings have been had in the Superior Court of New Jersey, Law Division, Civil Part, Ocean County.

18. R&F reserves all defenses.

19. R&F reserves the right to amend or supplement this Notice as necessary.

WHEREFORE, R&F gives notice that the above-described action pending against it in the Superior Court of New Jersey, Law Division, Civil Part, Ocean County is properly removed to this Court.

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